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May 6, 2021

Via ECF

Hon. Loretta A. Preska, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Motion for Extension of Time to Move for Substitution of Cho Kam Sze
Ye v. 2953 Broadway LLC, No. 18-cv-4941 (LAP), (S.D.N.Y.)

Your Honor,

I represent the Plaintiffs in the above-referenced matter. I write respectfully to request an extension of 45 days to move for the substitution of Defendant Cho Kam Sze a/k/a Tommy Sze (hereinafter “Tommy Sze”) due to the continued pendency in the Queens County Surrogate’s Court of a petition for administration of Tommy Sze’s estate. This would extend Plaintiffs’ time to move from May 2, 2021 to June 16, 2021.

Tommy Sze died on October 6, 2020. On November 5, 2020, his son and distributee, Edwin Qiang Xi Sze a/k/a Qiang Xi Sze a/k/a Edwin Sze (hereinafter “Edwin Sze”), through counsel Yi Lin, filed a petition for letters of administration. Counsel for Plaintiffs learned of Tommy Sze’s death on December 14, 2020, from his counsel (who is also counsel for 2953 Broadway Inc. d/b/a Vine Sushi (hereinafter “Vine Sushi”)), and filed a suggestion of death upon the record on December 18, 2020. Accordingly, the time for any party to move for substitution of Tommy Sze is March 11, 2021. *See* Fed. R. Civ. P. 25(a)(1). Defense counsel provided Plaintiffs’ counsel with a copy of Edwin Sze’s petition, obtained from Yi Lin, on December 25, 2020. A copy was filed to the docket in this case at Dkt. No. 96-1.

Edwin Sze’s domicile was redacted from the copy of the petition we received, however, on December 31, 2020, his attorney Yi Lin consented by email to accept service of Plaintiffs’ motion for substitution on his behalf. A copy was filed to the docket in this case at Dkt. No. 96-2.

According to Mr. Lin, as of today the Surrogate’s Court has not provided Mr. Lin with written notice of a case number. Accordingly, it is our belief that the Surrogate’s Court has still not begun processing Edwin Sze’s petition.

It is our belief that ultimately, the Surrogate’s Court will appoint him the administrator of Tommy Sze’s estate. However, the Surrogate’s Court has not yet done so, and in the interest of moving this case, Plaintiffs anticipate moving the Surrogate’s Court on an emergency basis to appoint the public administrator a temporary administrator for the limited purpose of substituting for Cho Kam Sze. *See Hybrid Capital Group, LLC v. Padell*, 17-cv-06343 (KPF), Dkt. Nos. 71, 71-1 (S.D.N.Y. Feb. 18, 2019). It is our belief that this process will proceed more expeditiously.

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Additionally, the New York courts should be more able to resume normal operations after about May 24, 2021, when it will move from a reduced staffing level due to the pandemic, to a normal staffing level. *See attached* NYSBA COVID-19 update (“With normal staffing levels, [Chief Judge Janet] DiFiore said the courts will be able to conduct an increased number of in-court proceedings.”).

Therefore, Plaintiffs request that this Court extend the time for filing their motion for substitution of Tommy Sze by Edwin Sze an additional 45 days. *See Hybrid Capital Group, LLC v. Padell*, 17-cv-06343 (KPF), Dkt. No. 68 (S.D.N.Y. Nov. 16, 2018) (granting 45-day extension when petition for appointment of executor was still pending when motion for substitution under Rule 25 was due).

I thank the Court for its attention to and consideration of this matter.

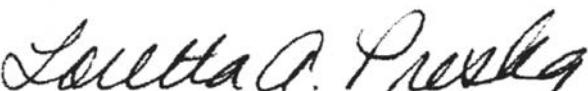
Respectfully submitted,
TROY LAW, PLLC

/s/ John Troy
John Troy
Attorney for Plaintiffs

cc: via ECF
all counsel of record

SO ORDERED.

Dated: June 21, 2021
New York, New York


LORETTA A. PRESKA, U.S.D.J.